

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE: SUSAN LYNN CAVENDER, M.D.

Complaint No. 12-01-W

CONSENT ORDER

The West Virginia Board of Medicine ["Board"] and Susan Lynn Cavender, M.D. ["Dr. Cavender"] freely and voluntarily enter into the following Consent Order pursuant to the provisions of West Virginia Code § 30-3-14, et seq.

FINDINGS OF FACT

1. Dr. Cavender holds a license to practice medicine and surgery in the State of West Virginia. Her license, No. 14497, was initially issued in 1985. Dr. Cavender's address of record is in Charleston, West Virginia.

2. On January 8, 2012, the Board's Complaint Committee reviewed a December 12, 2011, letter from C.A. Cook, Detective with the South Charleston Police Department. The letter stated that during the December 5, 2011, execution of a search warrant at an apartment in Cross Lanes, West Virginia, Detective Cook saw medications prescribed by Dr. Cavender throughout the residence that were "obviously being abused and our search warrant narrative included the trading of 40mg Opana pills for stolen merchandise."

3. In his December 12, 2011, letter, Detective Cook reported that he had obtained a WV Board of Pharmacy report on controlled substances prescribed to the resident of the

apartment. Detective Cook reported that between April 24, 2006 and June 8, 2006, Dr. Cavender prescribed to the patient 100 10 mg Lortab, 120 500 mg/5mg Tylox, 120 20 mg Oxycontin, 100 500 mg/5 mg APAP/Oxycodone and 200 500 mg/10 mg APAP/Hydrocodone Bitartrate. Detective Cook reported that these prescriptions were filled at multiple pharmacies.

4. Based upon the letter, the Complaint Committee issued an Initiated Complaint against Dr. Cavender on January 8, 2012, alleging that she was in apparent violation of West Virginia Code § 30-3-14(c)(17) and 11 CSR 1A 12.1 (e) and (j), and 12.2 a.D and d., all relating to dishonorable, unethical or unprofessional conduct likely to harm the public or any member thereof and departing from the standards of acceptable medical practice by prescribing excessive amounts of controlled substances and conduct which has the effect of bringing the medical profession into disrepute.

5. As part of its investigation, the Complaint Committee issued a Subpoena Duces Tecum ["Subpoena"] on March 23, 2012, for the entire medical records and billing records maintained by Dr. Cavender regarding 10 of her patients.

6. Dr. Cavender refused to comply with the Subpoena. The Board subsequently filed a Petition in the Circuit Court of Kanawha County to require Dr. Cavender to produce records in response to the Subpoena. Dr. Cavender filed a Motion to Quash the Subpoena.

7. On August 21, 2012, the Circuit Court of Kanawha issued an Order denying the Motion to Quash and ordering Dr. Cavender to provide the Board with the records described in the Subpoena within 10 days.

8. Dr. Cavender subsequently produced the requested medical and billing records.

9. The Board retained as an independent records reviewer, and he reviewed the records from Dr. Cavender. In a report dated October 24, 2012, the reviewer concluded that (a)

Dr. Cavender failed to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances;(b) that Dr. Cavender departed from the standards of acceptable medical practice by prescribing excessive amounts of controlled substances; (c) that Dr. Cavender prescribed prescription drugs in good faith, but not in a therapeutic manner in accordance with accepted medical standards and in the course of her professional practice, and (d) that Dr. Cavender failed to keep written records justifying the course of treatment.

10. On January 13, 2013, Dr. Cavender appeared before the Complaint Committee for a discussion regarding her practice and prescribing of controlled substances.

11. The Board has reviewed this matter in detail and has determined that the continued practice of medicine by Dr. Cavender in the State of West Virginia could adversely affect the health and welfare of her patients unless Dr. Cavender fully complies with the provisions of this Consent Order.

CONCLUSIONS OF LAW

1. The Board has a mandate pursuant to the West Virginia Medical Practice Act to protect the public interest. W. Va. Code § 30-3-1.

2. Probable cause may exist to substantiate charges against Dr. Cavender for violations of the following provisions of the West Virginia Medical Practice Act and Rules of the Board: West Virginia Code § 30-3-14(c)(17) and 11 CSR 1A 12.1 (e) and (j), and 12.2 a.D and d., relating to dishonorable, unethical or unprofessional conduct likely to harm the public or any

member thereof and departing from the standards of acceptable medical practice by prescribing excessive amounts of controlled substances and conduct which has the effect of bringing the medical profession into disrepute.

3. The Board has further determined that, under the circumstances relating to the Initiated Complaint and the Board's investigation thereof, it is appropriate and in the public interest to enter into this Consent Order with Dr. Cavender in lieu of filing a Complaint and Notice of Hearing.

CONSENT

Susan Lynn Cavender, M.D., by her signature below, agrees, solely and exclusively for purposes of this agreement, to the following:

1. Dr. Cavender acknowledges that she is fully aware that, without her consent herein, no legal action may be taken against her or her license to practice medicine and surgery in the State of West Virginia unless a hearing is held in accordance with W. Va. Code § 30-3-14(h) and § 29A-5-1, et seq.

2. Dr. Cavender further acknowledges that she has the following rights, among others: the right to a formal hearing before the Board, the right to reasonable notice of the hearing, the right to be represented at the hearing by counsel at her own expense, the right to cross-examine witnesses against her at the hearing and the right to appeal under Chapter 29A of the West Virginia Code in the event a final order or decision adverse to her is entered.

3. Dr. Cavender waives all rights to a hearing.

4. Dr. Cavender consents to the entry of this Consent Order relative to her practice of medicine and surgery in the State of West Virginia.

5. Dr. Cavender understands that this Consent Order is considered public information, and that it may be reported, as required by law, to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

ORDER

WHEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, and on the basis of the consent of Dr. Cavender, the West Virginia Board of Medicine hereby **ORDERS** that Dr. Cavender's West Virginia medical license, No. 14497, is hereby **REVOKED**, which revocation is immediately **STAYED**, and effective upon entry of this Consent Order, Dr. Cavender's license is placed on **PROBATION** for a period of two years, subject to the following:

1. Dr. Cavender shall complete a continuing medical education intensive course in medical record-keeping presented by Case Western Reserve University's School of Medicine and shall provide proof of completion of the course to the Board.

2. Dr. Cavender shall complete a continuing medical education intensive course in controlled substance prescribing/pain management presented by Case Western Reserve University's School of Medicine and shall provide proof of completion of the course to the Board.

3. Dr. Cavender shall read and study the book "Responsible Opioid Prescribing, A Clinician's Guide, Second Edition," by Scott M. Fishman, M.D., and shall successfully complete and pass the on-line continuing medical education test regarding that

book, and shall provide proof of completion thereof to the Board.

4. Dr. Cavender shall at all times maintain adequate patient medical records and charts necessary to justify the course of treatment and to enable her to provide a proper diagnosis and treatment, and she shall keep such patient medical records for a minimum of three years from the date of the last patient encounter in a manner which permits the patient or a successor physician to access them as required of all practicing physicians by the West Virginia Medical Practice Act, the Rules of the Board and W. Va. Code § 16-29-1 *et seq.*

5. During the two-year period of restriction and probation, the Board may, at its discretion, conduct an audit of 10 patient charts annually to verify compliance with proper record-keeping and prescribing.

6. Dr. Cavender is hereby **PUBLICLY REPRIMANDED** for her unprofessional conduct.

If Dr. Cavender violates any of the terms of this Consent Order, as determined by the Board, the Board may terminate and dissolve the stay of revocation herein imposed, upon written notice of the same to Dr. Cavender, and Dr. Cavender understands that, notwithstanding any provision of law to the contrary, such termination and dissolution of the stay of revocation may occur without any hearing provided by the Board, and that by her signing of this Consent Order, Dr. Cavender has consented to the same.

The foregoing Order was entered this 8th day of March, 2013.

WEST VIRGINIA BOARD OF MEDICINE

Consent Order
Susan Lynn Cavender, M.D.

Rev. O. Richard Bowyer
Reverend O. Richard Bowyer
President

Marian Swinker, M.D., M.P.H.
Marian Swinker, M.D., M.P.H.
Secretary

I, SUSAN LYNN CAVENDER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT ORDER. I UNDERSTAND THAT, BY SIGNING THIS CONSENT ORDER, I HAVE WAIVED CERTAIN RIGHTS. I AM SIGNING THIS CONSENT ORDER VOLUNTARILY. I UNDERSTAND THAT THIS CONSENT ORDER CONTAINS THE ENTIRE AGREEMENT WHICH I HAVE MADE WITH THE WEST VIRGINIA BOARD OF MEDICINE, AND THAT THERE ARE NO OTHER AGREEMENTS, EITHER VERBAL OR WRITTEN, BETWEEN THE BOARD OF MEDICINE AND ME REGARDING THIS MATTER.

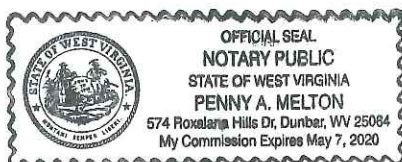
Susan Lynn Cavender, M.D.
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STATE OF West Virginia
COUNTY OF Kanawha

I, Penny A. Melton, a Notary Public in and for said county and state, do hereby certify that Susan Lynn Cavender, M.D., whose name is signed above, has this day acknowledged the same before me.

Given under my hand this 15th day of February, 2013.

My commission expires May 7, 2020.



Penny A. Melton
Notary Public